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**MS PETITION** 

Docket No.: 0020-5216P

(PATENT)

### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of: Kenji OHNISHI et al.

Application No.: 10/757,417

Confirmation No.: 3381

Filed: January 15, 2004

Art Unit: 1774

For: FIBER BOARD

Examiner: M. L. Dixon

# PETITION UNDER 37 C.F.R. § 1.181 TO WITHDRAW THE HOLDING OF ABANDONMENT

MS Petition Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Sir:

In response to the Notice of Abandonment dated August 26, 2005, applicant hereby respectfully petitions under the provisions of 37 C.F.R. § 1.181 and MPEP § 711.03(c) for a decision to withdraw the holding of abandonment due to failure to receive the Notice of Allowance and Issue Fee.

The Notice of Abandonment dated August 26, 2005 indicates that this application was abandoned in view of the applicant's failure to pay the Issue Fee mailed on March 14, 2005.

However, the Notice of Allowance and Issue Fee was never received by the offices of the undersigned, and a search of the file jacket for the present application and the firm docketing records reveals that the Notice of Allowance of March 14, 2005 was never received. The offices of the undersigned did not become aware of the Notice of Allowance and Issue Fee until advised of the holding of abandonment.

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#### 1. EVIDENCE

The fact that the Notice of Allowance of March 14, 2005 was never received in the offices of Birch, Stewart, Kolasch & Birch, LLP is evidenced by Exhibits I and II attached hereto.

**Exhibit I** is a copy of the front page of the file jacket of Appl. No. 10/757,417 (which corresponds to Attorney Docket No. 0020-5216P). It is the policy in our office to record all information regarding Office Actions and responses on the front page of the file jacket. As the Petitions Examiner will note, there is no entry for the Notice of Allowance and Issue Fee dated March 14, 2005 on the front page of the file jacket of the above-referenced application.

Exhibit II is a copy of the computer-generated daily docket sheet(s) of Birch, Stewart, Kolasch & Birch, LLP for the date of June 14, 2005 (the due date for said Issue Fee), containing entries made by our Docketing Department of due dates in response to PTO actions. It is the policy of our offices to docket all due dates for Office Actions received from the USPTO into our computer docketing system.

Although Application Numbers, Titles, Client Names, and Inventor Names have been redacted from this Exhibit to avoid public disclosure of these matters once the present application is patented, it is still clear that there is no entry for the due date of June 14, 2005 which corresponds to the current application, Attorney Docket No. 0020-5216P.

The undersigned certifies that he has reviewed the computer-generated daily docket sheets for the due date of June 14, 2005 and did not locate an entry that corresponds to Appl. No. 10/757,417.

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In fact, the reason for the non-receipt of the Notice of Allowability is the fact that it was mailed in error by the USPTO to "McQuire Woods LLP, 1750 Tysons Blvd., Suite 1800, McLean, VA 22102-4215". However, neither a revocation of Power of Attorney nor a change of address was ever filed in the name of "McQuire Woods LLP". Further, Birch, Stewart, Kolasch & Birch, LLP, 8110 Gatehouse Road, Falls Church, VA 22042-1248" is, and remains the firm of record. Also, even though evidently misdirected, no Notice of Allowance was ever "forwarded" to the offices of Birch, Stewart, Kolasch & Birch.

## 2. TERMINAL DISCLAIMER

The present application was filed on or after May 29, 2000. Accordingly, no Termina
Disclaimer is necessary. It is noted that the present Petition is being timely filed within two (2)
months of the mailing date of the Notice of Abandonment. Accordingly, no reduction in paten
term adjustment should be made, in accordance with the provisions of 37 C.F.R. § 1.704(c)(4).
The present application was filed on or after June 8, 1995 but before May 29, 2000. The present Petition is being timely filed within two (2) months of the mailing date of the Notice of Abandonment. Accordingly, no Terminal Disclaimer under 37 C.F.R. § 1.321(a) is necessary See MPEP § 711.03(c).
The present application was filed on or after June 8, 1995 but before May 29, 2000. The
present Petition is being filed more than two (2) months from the mailing date of the Notice of
Abandonment. Accordingly, a Terminal Disclaimer under 37 C.F.R. § 1.321(a) and the required
fee set forth in 37 C.F.R. § 1.20(d) are being submitted concurrently herewith. The period being
disclaimed is equivalent to the period between (1) the date that is two months after the mail date

of the notice of abandonment and (2) the filing date of the present petition to withdraw the

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holding of abandonment. See MPEP § 711.03(c).

Likely this is a misspelling of McGuire Woods LLP

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In view of the above-described facts, it is respectfully submitted that the abandonment of the present application was unavoidable and due solely to problems with mailing of a Notice of Allowance since the Notice of Allowance dated March 14, 2005 was never received in the offices of Birch, Stewart, Kolasch & Birch, LLP. The present Petition is timely filed for this purpose.

Since the above-mentioned Notice of Allowance was never received in the offices of the undersigned, it is believed that no petition fee is necessary in connection with this Petition.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fee required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Dated: October 19, 2005

Respectfully submitted,

Marc S. Weiner

Registration No.: 32,181

BIRCH, STEWART, KOLASCH & BIRCH, LLP

J#95774

8110 Gatehouse Rd.

Suite 100 East

P.O. Box 747

Falls Church, Virginia 22040-0747

(703) 205-8000

Attorney for Applicant

Attachments

Minday June 13:2005 ( Floor: 5th Action Du Due Date Action Du Indicator Action Ty Action Attorney(Attorney2): 14-Jun-2005 FIRST AM Due Date OAF1	3.2005  Action Due Action Type  Cou  (Attorney2): ADM ANDREW D. MEIKLE FIRST AMENDMENT OAF1  Unit	Due Date List By Filoo  V-14-Jun-2005  Docket Number/SubCase Status Country Client  EIKLE  0171-0973 / Published United States of America	By Floor a 2005 Status Client Published	Pa Ab	App Nùmber Pat Number	
14-Jun-2005 Reminder	ISSUE FEE-I MONTH	0754-0191 / United States of America Remarks: Pub. Fee	Published			16-Jun-2003
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14-Jun-2005 Duc Date	Tax 11.5	0179-0183 / United States of America	ISSUED		
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14-Jun-2005	ANNUITY - REM I MONTH	4022-0103 /	Granted		21-Jan-2002
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Action Attorney(Attorney2):		GMM GERALD M. MURPHY, JR.	•		
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Due Date	Action Due Action Type	Docket Number/SubCase Country	Status	App Number Pat Number	App Date Iss Date	Other Attys
14-Jun-2005 Reminder	IDS Reminder Information Disclosure Stmnt	0283-0211 / 1 United States of America	Pending		14-Apr-2005	GMM
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Action Attorney(Attorney2):	TNI	INTERNATIONAL DEPARTMENT				
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Action Attorney(A	Action Attorney(Attorney2): JMK J. Mark Konieczny	y 0365-0558/	Published		14-Feb-2003	GMM
Due Date	OAFI	United States of America				JMK
Action Attorney(Attorney2):	Attorney2): JWB JOHN W. BAILEY	Y 0020-5200 /	Published		17-Dec-2003	JWB
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14-Jun-2005	REQUEST FOR EXAMINATION DUE		Pending		07-Jan-2002	DRN
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Due Date	Action Due Action Type	Docket Number/SubCase Country	Status Client	App Number Pat Number	App Date Iss Date
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Action Attorney(Attorney2):	SBB	SUSAN B. BLASCO	Pending		30-Sep-2004
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ATTY. MSW CMM



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# BIRCH, STEWART, KOLASCH & BIRCH, LLP

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INVENTOR <u>Kenji Ohnishi, Mas</u> Ando, Kazunori Umeoka,	zayaki Okuzau Ryo Sugahxur	a, Yüzo Okudaira, It a, Bunkai Ryu
TITLE Fiber Board		
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OA 92204	Amendment 12.22.07	Filed 12-20-04 (
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